IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 627 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.6830/2007 Dated 01/03/2007
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APPELLANT/1ST PETITIONER:

C.ARAVIND BABU, FLAT NO.306,
DOOR NO.29/2295 A-33, SECRETARY FLAT OWNERS ASSOCIATION, AISWARYA FLAT, CHAMBAKKARA, KOCHI.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS/RESPONDENTS/PETITIONER:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY (TAXES),
TRIVANDRUM.

2. THE TAHSILDAR,
KANAYANNUR TALUK,
ERNAKULAM.

3. MRS.PREMA RAMACHANDRAN,
FLAT NO.G1,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

4. C.M.CIDDAR,
FLAT NO.101,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

5. MRS.REKHA BALA,
FLAT NO.106,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

6. U.V.S.MENON,
FLAT NO.107,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

7. V.SUNDAR,
FLAT NO.110,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

8. S.R.KRISHNAN,
FLAT NO.202,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

9. VENKITACHALAM,
FLAT NO.203,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

10. MRS.N.T.SEETHALAKSHMI,
FLAT NO.205,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

11. A.SREEDHAR,
FLAT NO.206,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

12. MRS.HEMA RAVEENDRAN,
FLAT NO.207,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

13. P.R.RAMACHANDRAN,
FLAT NO.301,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

14. B.MURALIDAS,
FLAT NO.302,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

15. K.S.RAMAMOORTHY,
FLAT NO.303,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

16. MURALIDHARAN,
FLAT NO.307,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

17. P.S.RAMACHANDRAN,
FLAT NO.G2,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

18. VIJAY LAL, FLAT NO.G3,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

19. ACHUTHAN UNNI.K.,
FLAT NO.G4,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

20. MRS.VIJAYAM MOHAN NAIR,
FLAT NO.G5,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

21. MRS GEETHA UNNITHAN,
FLAT NO.102,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

22. VENKATESH NATARAJAN,
FLAT NO.103,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

23. MRS.MALIKA CHANDRASEKHARAN,
FLAT NO.104,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

24. K.SALVADY,
FLAT NO.105,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

25. MRS.SUBHADRA HARIKRISHNAN,
FLAT NO.108,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

26. MRS.SAROJA RABINDRANATH,
FLAT NO.109,
AISWARYA FLAT, CHAMBAKKARA, KOCHI-17.

27. MRS.SAROJA DEVI,
FLAT NO.201,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

28. S.A.NARAYANAN, FLAT NO.204,
AISWARYA FLAT,
CHAMBAKKARA, KOCHI.

29. MRS.VIDYA RAMANAN,
FLAT NO.208,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

30. HARIHARAN DHANDAPANI,FLAT NO.209,
AISWARYA FLAT, CHAMBAKKARA, KOCHI.

31. MRS.LATHA PADMANABHAN,
FLAT NO.210, AISWARYA FLAT, CHAMBAKKARA, KOCHI.

32. K.SASIVARMA,
FLAT NO.304, AISWARYA FLAT, CHAMBAKKARA, KOCHI.

33. MRS.SANTHA VISWANATHAN,
FLAT NO.305, AISWARYA FLAT, CHAMBAKKARA, KOCHI.

34. MRS.PRIYA HARIHARAN,
FLAT NO.308, AISWARYA FLAT, CHAMBAKKARA, KOCHI.

BY SPL. GOVERNMENT PLEADER (TAXES) MATHEW G. VADAKKEL.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN(AG.C.J.) & M.N. KRISHNAN,J.

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W.A. NO. 627 OF 2007

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Dated this the 13th day of March, 2007.

J U D G M E N T

Radhakrishnan,(Ag.C.J.)

The writ petition was preferred by the appellant and others seeking a writ of certiorari to quash Exts.P12, P12(a) and P12(b) and for a declaration that the building in question is assessable as distinct and separate units and seeking a direction to assess individually each flat owners and also for other consequential reliefs.

2. Ext.P12 is a notice issued by the Tahsildar to the writ petitioner and other flat owners in the Aiswarya Apartments demanding building tax. Learned counsel for the appellant submitted that there is no justification in issuing notice to the appellant for the purpose of recovery of building tax from other flat owners who are residing in the apartment as the appellant is only a Secretary of the Apartment owners Association and has no authority or right to represent other owners for the purpose of payment of building tax. Further it is submitted, if the Tahsildar proposes to assess various flats in the flat complex, he has to

issue notice individually to all the flat owners and not to the Secretary of Flat owners Association.

3. The learned Government Pleader has made available the files. We notice that no enquiry has been conducted by the Tahsildar to ascertain as to the whereabouts of the contractor or the builder who has constructed the flat complex. The Tahsildar has not called for the details from the Municipality to ascertain as to whom permission was granted by the Municipality for the construction of the building. Proper enquiry should have been conducted by the Tahsildar before issuing notice to the petitioners.

4. We also notice that in Ext.P1, the Purchaser had agreed that he would bear all the local taxes, cesses, levies, sales tax etc. that would be imposed or leviable on the value of the construction carried or deemed to be or to have been carried out by the Builders or their nominees for the Purchaser in terms of the covenants contained therein. Therefore, the Tahsildar has to take note of all these aspects and proceed in accordance with law. To enable the Tahsildar to do so, we are inclined to set aside Exts.P12(a) and P12(b), leaving it open to the Tahsildar to initiate fresh proceedings in accordance with law. Accordingly, the writ

appeal is allowed.

K.S. RADHAKRISHNAN,
ACTING CHIEF JUSTICE.

M.N. KRISHNAN, JUDGE.

ul/-